IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD
(Special Original Jurisdiction)

MONDAY, THE TWENTY FOURTH DAY OF SEPTEMBER
TWO THOUSAND AND SEVEN

PRESENT

THE HON'BLE SRI JUSTICE C.Y.SOMAYAJULU

WRIT PETITION No.10057 of 2001
AND
WRIT PETITION NO. 17174 OF 2002

WRIT PETITION No.10057 of 2001.

Between:

Raja Goud

.... PETITIONER

AND

The District Collector
(Prohibtion and Excise),
Nizamabad District at
Nizambad and another.

....RESPONDENTS

WRIT PETITION NO. 17174 OF 2002.

Between:

T.Balaraj Goud.

.... PETITIONER

AND

Prohibtion and Excise Superintendent,
Nizamabad District at Nizambad
and another.

....RESPONDENTS

THE HON'BLE SRI JUSTICE
C.Y.SOMAYAJULU

WRIT PETITION No.10057 OF 2001
AND
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C O M M O N O R D E R

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Petitioners through this petition are seeking a direction to the respondents not to take any action in pursuance of distraint order passed against them for recovery of excise arrears for the Excise Year 1989-1990.

2. Petitioners became the highest bidders in excise auction held in 1989-1990. Their case is that they carried on business only for a few days and that they had to close the business because of the threats by the extremists, and that they brought that fact to the notice of the respondents and surrendered their licences and requested for cancellation of their licences, agreeing to pay the resultant loss the Government may incur due to re-auction, and that the respondents, without considering their request, initiated proceedings for recovery of the arrears by invoking the provision of A.P. Revenue Recovery Act which is illegal and contrary to law because they surrendered their licences long time back and as there was no default on their part, as they were unable to carry on the business only due to the threats of the extremists.

3. On behalf of the respondents, the Sub-Divisional Prohibition and Excise Officer, Nizamabad, filed his counter-affidavit *inter alia*

contending that the petitioners having full knowledge of the circumstances prevailing in the areas only, had participated in the bid and became the highest bidders and hence are bound to pay the arrears as per the counter-part the agreements executed by them along with interest at 18% per annum on the amounts due as per Section 65 of the Andhra Pradesh Excise Act, 1968 ('the Act'). The licences issued to the petitioners are governed by A.P. Excise (Lease of Right to Sell Arrack in Retail) Rules, 1988 and A.P. Excise (Arrack and Toddy Licences General Conditions) Rules, 1968 and the Andhra Pradesh (Arrack Retail Sales Special Conditions of Licences) Rules, 1969 and the orders issued by the Commissioner of Prohibition and Excise, Andhra Pradesh, Hyderabad from time to time, and so, they are not entitled to any relief.

4. The contention of the learned counsel for petitioners is that though the petitioners participated in the auction, they could not carry on business because of the extremists did not permit them to continue the business and so they wrote letters to the Government agreeing to surrender the licences and requesting to hold a

re-auction, but the respondents did not consider those representations to re-auction the leasehold rights, but demanded the alleged arrears from the petitioners after a long lapse of 10 years, after the claims got barred by time, and so, the respondents are not entitled to invoke the provisions of the Revenue Recovery Act for recovery of the amounts allegedly due from the petitioners. He placed strong reliance on ***RAGHUNADHA REDDY V/s. THE STATE OF HYDERABAD THROUGH THE SECRETARY TO GOVERNMENT REVENUE DEPARTMENT***[1], ***MANDELA NAGASURYA RANGA RAO, PALACOLE V/s. THE EXCISE SUPERINTENDENT, WEST GODAVARI AT ELURU***[2], ***D.VENKATESHWARA RAO V/s. COLLECTOR, NIZAMABAD***[3], ***N.A.RADHA V/s. STATE OF ANDHRA PRADESH, REVENUE DEPARTMENT***[4], ***V.K.ROY V/s.***

COMMISSIONER, MUNICIPAL CORPORATION OF HYDERABAD [5] ***and K.SIVA GOUD V/s. GOVERNMENT OF ANDHRA PRADESH*** [6] in support of his contention.

5. The contention of the learned Government Pleader is that in view of Section 33(2) of the Act, as provisions relating to surrender of licences would not apply to leases granted under Section 17 of the Act, and as the petitioners were granted leases under Section 17 of the Act, question of the petitioners surrendering their licences does not arise, and so petitioners who are bound by the agreements entered into by them cannot be heard to say that the Government is bound to re-auction the leasehold rights, and as no question of limitation arises for recover excise arrears in view of ***SYNDICATE BANK, BRANCH AT HANAMKONDA V/s. EXCISE SUPERINTENDENT, EXCISE DEPARTMENT, WARANGAL, WARANGAL DISTRICT*** [7], respondents have a right to recover the arrears by invoking the provisions of Revenue Recovery Act as per Section 65 of the Act.

6. In reply, the contention of the learned counsel for the petitioners is that ***SYNDICATE BANK***'s case (7 supra) relied on by the learned Government Pleader has no application to the facts of the case, and in the event of the Court holding that petitioners are not entitled to the relief sought he urged that inasmuch as the representations of the petitioners are not considered by the respondents, a direction may be given to the respondents to consider the representation of the petitioners before taking any further action against the petitioners.

7. In ***RAGHUNADHA REDDY***'s case (1 supra), Raghunadha Reddy filed the suit seeking a decree of perpetual injunction restraining the Government from collecting arrears from him and for return of the earnest money deposit made by him for participation in an auction sale. The Court, after considering the law relating to auction sales, held that the claim for recovery of earnest deposit is not governed by Section-41 of the Akbari Act, but is governed by the

general law of limitation, and so, suit for recovery of that amount could be brought within three years. In my considered opinion, the said decision has no application to the facts of this case, because this is not a case for recovery of earnest money.

8. In ***MANDELA NAGASURYA RANGA RAO***'s case (2 supra), the license of the writ petitioner was cancelled and the arrack shops, which were taken back from the petitioner, were resold in an auction and the resultant loss was calculated as per Rule 22(3) of the Arrack Rules and the loss incurred was sought to be recovered from him. Questioning the same he filed the writ petition. On the ground that the respondents did not issue any notice before determining the amount due to them, and as they did not furnish the particulars as to how the amount sought to be recovered was arrived, and as this Court in ***GOVINDU RAMA RAO V/s. THE REVENUE DIVISIONAL OFFICER, SRIKAKULAM***[8] held that any action for recovery of amount under the Revenue Recovery Act is initiated, due opportunity has to be given to the concerned, the Court directed the concerned authorities to give a reasonable opportunity to the petitioner for determining the resultant loss sustained by the Government due to re-auction of the shops. Since this is not a case of recovery of loss suffered due to re-auction, the said decision has no application to the facts of this case

9. In ***D.VENKATESHWARA RAO***'s case (3 supra), the A.P. Civil Supplies Corporation, besides filing a suit for recovery of the amount allegedly due from the petitioner, wrote to the Collector to initiate proceedings under the A.P. Revenue Recovery Act for recovery of the amount allegedly due from him. So, he filed the writ petition questioning the letter written to the Collector for recovery of the amount under Revenue Recovery Act. The Division Bench held that in view of the notification issued under G.O.Ms.No.261, Revenue (N) Department, dated 17.03.1987, the sum due to the Corporation can be recovered under the provisions of the Revenue Recovery Act, but as

the amount to be recovered under the Revenue Recovery Act must be an ascertained amount, and in asmuch as a suit for rendition of accounts was filed by the Civil Supplies Corporation against the petitioner, the amount mentioned in the notice, which cannot be said to an ascertained amount, cannot be permitted to be recovered under the provisions of the Revenue Recovery Act. The said decision is not of help to the petitioners because an ascertained amount as per the agreement only is sought to be recovered from the petitioners under the Revenue Recovery Act.

10. In ***N.A.RADHA***'s case (4 supra), M/s.Vikram Industries, a partnership firm, was sanctioned a term loan of Rs.67,000/- by the A.P. State Finance Corporation in 1971, and wrote a letter dated 05.10.1988 informing the said firm that an amount of Rs.2,46,218-70 ps., is due from it and that that amount would be recovered from it under the Revenue Recovery Act. Questioning the same, the firm filed the writ petition on the ground that the claim is barred by time, as it did not pay any amount or acknowledge its liability after 1971. The Court upheld the contention of the firm and held that the claim which is barred by time cannot be recovered under the provisions of the Revenue Recovery Act. A.P.State Financial Corporation is a body corporate, and can sue and be sued in its own name, and is not the same as Government for the purpose of Limitation Act, which prescribes 30 years period of limitation for recovery of Government dues. So, the said decision is not of any help to decide this case.

11. In ***V.K.Roy***'s case (5 supra), it is held that recovery of arrears of tax due to the Hyderabad Municipal Corporation by way of distraint proceedings can be made for a period of 3 years only from the date when the tax becomes due. The said decision also has no application to the facts of the case because the amount sought to be recovered from the petitioner is not the tax due to the Municipal Corporation of

Hyderabad.

12. In ***K.SHIVA GOUD***'s case (6 supra), the learned Judge relying on the ratio in Mandela Nagasurya Rangarao's case (2 supra) quashed the proceedings for recovery of excise arrears. The said decision is also of no help to the petitioners.

13. In the counter affidavit filed on behalf of the respondents it is clearly stated that the petitioners made some part-payment. No reply-affidavit is filed disputing the said fact. So, it is clear that petitioners admit their liability. The sum due to the Government from the petitioners is known and is an ascertained sum. Petitioners, who were given opportunity to pay the amounts due, failed to avail that opportunity. The Act authorizes recovery of amount due, by taking recourse to the provisions of the Revenue Recovery Act. So, the respondents have every right to recover the amounts due from the petitioners by taking recourse to the provisions of the Revenue Recovery Act.

14. Merely because the petitioners made a request for re-auction, the respondents are not bound to hold a re-aucton. In view of Section 33 of the Act, the question of surrender of licence by petitioners does not arise. The fact that the respondents intend to proceed with the auction means and implies that respondents considered and rejected the request of the petitioners. So, petitioners are not entitled to any relief.

15. Hence, the writ petitions are dismissed. No costs.

JUSTICE C.Y.SOMAYAJULU

24th SEPTEMBER, 2007

PGS/PNV

[1] (1962)1 ALT 535

[2] 1997(2) ALT 748

[3] 1998(1) ALT 229 (D.B)

[4] 2000(2) ALT 484

[5] 2003(1) ALT 236 (D.B)

[6] 2004(5) ALT 326

[7] 1981 APHN 3

[8] 1975(2) An.W.R.428